

Virginia Human Rights Act – Pregnancy and Childbirth

The Virginia Human Rights Act (VHRA) has long prohibited terminating employees on the basis of pregnancy and “childbirth or related medical conditions.” Effective July 1, 2020, the amended VHRA creates a private cause of action prohibiting broader discrimination related to these conditions and requires accommodations.

Reasonable Accommodation. Under the amended VHRA, employers must provide reasonable accommodations to individuals with limitations related to pregnancy, childbirth or related medical conditions, specifically including lactation. A non-exhaustive list of such accommodations includes: (1) more frequent or longer bathroom breaks, (2) breaks to express breast milk, (3) access to a private location other than a bathroom for the expression of breast milk, (4) acquisition or modification of equipment, (5) access to or modification of employee seating, (6) a temporary transfer to a less strenuous or hazardous position, (7) assistance with manual labor, (8) job restructuring, (9) a modified work schedule, (10) light-duty assignments, and (11) unpaid leave to recover from childbirth. An employer cannot require an employee to take leave if another reasonable accommodation is available.

Undue Hardship. The amended VHRA provides that employers need not make accommodations that would impose an undue hardship. Three factors determine whether an accommodation would cause an undue hardship: (1) the nature of the employer’s operations, including composition and structure of the employer’s workforce; (2) the size of the facility; and (3) the nature and cost of the accommodations requested.

Interactive Process. The amended VHRA requires that employers engage in an interactive process to determine if an accommodation is reasonable and, if it is not, to discuss alternative accommodations.

Retaliation Prohibited. Employers are prohibited from taking adverse action against an employee who requests or uses a reasonable accommodation. “Adverse action” includes refusing to reinstate an employee to her previous position or an equivalent position with equal pay, seniority and other benefits when the need for the accommodation ends.

New Poster and Handbook Provisions. Employers must notify employees about the non-discrimination and reasonable accommodation aspects of the law in the form of a poster and in any employee handbook. This information must also be provided to all current employees, all new employees when they begin employment, and to any employee within 10 days of the employee providing notice to the employer of the pregnancy.

Private Right of Action. Employees may sue in state court for discrimination or failure to accommodate. The statute of limitations is two years from the violation or, if the employee filed a complaint with an appropriate state agency or commission within that time frame, 90 days from the final disposition of such complaint. Damages may include compensatory damages, back pay, other equitable relief, reasonable attorneys’ fees, costs and injunctive relief.

Effective Dates. While the amended VHRA takes effect July 1, 2020, the poster and handbook requirements are mandatory beginning Oct. 29, 2020.

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District Policy: It is the District’s policy to not discriminate against any employee based on pregnancy in any aspect of employment. It is further the District’s policy to handle all pregnancy, childbirth, related medical conditions, and all associated leave in accordance with the applicable state and federal regulations, including but not limited to the Virginia Human Rights Act, Pregnancy Act of 1978 and as amended, Family and Medical Leave Act and as amended, and in accordance with District policies related to paid and unpaid leave.